

Appeal from the Utah State Office, Bureau of Land Management, declaring the Silver Pinyon and Purple Sage mining claims null and void ab initio. U MC 297975 and U MC 297976.

Reversed.

1. Act of June 25, 1910--Act of August 24, 1912--Mining Claims:  
Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals  
and Reservations: Authority to Make--Withdrawals and Reservations:  
Effect of

Where an Executive Order withdrawing land from appropriation specifies that it is issued pursuant to the authority, and subject to the conditions of, the Act of June 25, 1910, the land described in the withdrawal is open to exploration, discovery, occupation, and purchase under the mining laws, so far as they apply to metalliferous minerals.

APPEARANCES: N. W. Brown, pro se, American Fork, Utah.

#### OPINION BY ADMINISTRATIVE JUDGE KELLY

N. W. Brown has appealed an August 17, 1987, decision of the Utah State Office, Bureau of Land Management (BLM), declaring the Silver Pinyon (U MC 297975) and Purple Sage (U MC 297976) mining claims null and void ab initio.

The notice of location for the Silver Pinyon mining claim, which lists as locators N. W. Brown, Dan Proctor, and Donald J. Coates, gives the location of the site as the SE $\frac{1}{4}$  of sec. 25, T. 5 S., R. 4 W., Salt Lake Meridian, Tooele County, Utah. The notice of location for the Purple Sage mining claim, which lists N. W. Brown and Dan Proctor as locators, gives the location as the NE $\frac{1}{4}$  of sec. 34, T. 5 S., R. 4 W., Salt Lake Meridian, Tooele County, Utah. April 17, 1987, is the date of location indicated for both claims.

In its decision declaring the claims null and void ab initio, BLM states that the claims are located on land which was withdrawn from

mineral entry by Executive Order (EO) No. 4539, dated November 24, 1926. 1/ Appellant argues that both claims are located in T. 5 S., R. 4 W., Salt Lake Meridian, and that the EO cited applied only to T. 5 S., R. 3 W., Salt Lake Meridian. 2/

EO No. 4539 reads:

Under authority contained in the act of June 25, 1910, (36 Stat., 847), as amended by the act of August 24, 1912 (37 Stat., 497), and subject to the conditions, provisions and limitations of said acts, it is hereby ordered that the public lands in the surveyed portions of T. 5 S., Rs. 3 and 4 W., S.L.M., Utah, be and the same are hereby withdrawn from settlement, location, sale, entry and all forms of appropriation \* \* \*.

Appellant's assertion that the EO did not concern the land upon which the subject claims are located is clearly mistaken. The EO did withdraw the land in T. 5 S., R. 4 W., Salt Lake Meridian, Utah, from certain forms of appropriation.

[1] However, the EO did not withdraw lands from the location of mining claims for metalliferous minerals. The lands were withdrawn from appropriation "subject to the conditions, provisions and limitations" of the Act of June 25, 1910, commonly referred to as the Pickett Act, as amended by the Act of August 24, 1912. As amended, the Pickett Act specifies that "[a]ll lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals \* \* \*." 43 U.S.C. § 142 (1970) (repealed in 1976 by section 704(a) of the Federal Land Policy Management Act, 90 Stat. 2743). See Northwest Exploration, Inc. (On Judicial Remand), 89 IBLA 189 (1985); Mineral Life Corp., 81 IBLA 103 (1984); Western Nuclear, Inc., 55 IBLA 20 (1981).

Thus, it is necessary to determine whether appellant has located metalliferous mining claims. According to the form notices of location, the Purple Sage bears "Gold, Silver and other precious metals" and

1/ BLM's decision continues by noting that "[a]lthough this Executive Order was revoked, the lands were never opened for location." Given our analysis below, it is unnecessary for us to reach the issue of whether the revocation served to open the lands.

2/ Appellant also states, "I can and will use the laws of adverse possession to retain title to my property" (SOR at 1). We note that pursuant to 43 CFR 2091.1(b) any attempt to appropriate lands by adverse possession would be unsuccessful if the lands are withdrawn from the type of appropriation attempted. Steven R. Heady, 110 IBLA 245 (1989).

the Silver Pinyon bears "Gold, Silver, Copper, Lead and other valuable minerals." 3/

The record indicates the Purple Sage and Silver Pinyon mining claims are located for metalliferous minerals. Thus, we conclude that under the EO, the lands encompassed by appellant's claims were not withdrawn from appropriation, and BLM's decision declaring such claims null and void ab initio must be reversed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decision is reversed.

---

John H. Kelly  
Administrative Judge

I concur:

---

James L. Byrnes  
Administrative Judge

---

3/ The record contains no indication of what "other valuable minerals" may exist. We note that to the extent such other minerals may be non-metalliferous, they were precluded from location under the EO.